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**Service Litho Printing & Publishing Co. and
Graphic Communications International Union
Local 583.** Case 20-CA-27676

October 10, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX
AND HIGGINS

Upon a charge filed by the Union on February 20, 1997, the General Counsel of the National Labor Relations Board issued a complaint on June 30, 1997, against Service Litho Printing & Publishing Co., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On September 15, 1997, the General Counsel filed a Motion for Summary Judgment with the Board. On September 17, 1997, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted.¹

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation, with an office and place of business in San Francisco, California, has been engaged in providing printing services for commercial customers. During the calendar year ending December 31, 1995, the Respondent, in conducting its business operations, provided services

valued in excess of \$50,000 for enterprises located within the State of California which meet the applicable Board standard for assertion of jurisdiction on a direct basis, and provided services valued in excess of \$50,000 for enterprises located outside the State of California. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All production employees employed by the Respondent at its San Francisco, California facility; excluding all other employees, guards and supervisors as defined in the Act.

Since at least May 1, 1990, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit, as part of a multi-employer association unit, and since then the Union has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which expired about May 12, 1996 (the Agreement). At all times since at least May 1, 1990, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

Section 21.5 of the Agreement provides that the Respondent shall pay its employees their accrued vacation pay immediately upon their termination. Section 47.1 of the Agreement provides that if the Respondent ceases operations, it shall pay its employees their contractually mandated severance pay immediately upon their termination. Section 47.2 of the Agreement provides that if the Respondent ceases operations, it shall make the contractually mandated health care and pension trust fund contributions on behalf of terminated employees for each week of severance pay.

About July 31, 1996, the Respondent unilaterally changed the terms and conditions of employment of the unit employees by ceasing operations at its facility and terminating all of its employees without complying with these provisions of the Agreement. These subjects relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining. The Respondent engaged in this conduct without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct. Until at least August 26, 1996, the

¹ Although no further reminder or warning of the consequences of failing to file an answer was sent or given to the Respondent, this does not warrant denial of the motion. See, e.g., *Superior Industries*, 289 NLRB 834, 835 fn. 13 (1988).

Union did not know and could not have reasonably been expected to know that the Respondent was repudiating these provisions of the Agreement.

CONCLUSIONS OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(5) and (1) by unilaterally failing to comply with the provisions of the Agreement requiring the Respondent to pay its employees their accrued vacation pay and their contractually mandated severance pay immediately upon their termination, we shall order the Respondent to comply with these terms of the Agreement and make the unit employees whole for any loss of earnings attributable to its unlawful conduct. Backpay shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Furthermore, having found that the Respondent has violated Section 8(a)(5) and (1) by failing to make contractually required contributions to the health care and pension trust funds on behalf of terminated employees for each week of severance pay, we shall order the Respondent to make whole its unit employees by making all such delinquent contributions, including any additional amounts due the funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, supra, with interest as prescribed in *New Horizons for the Retarded*, supra.²

²To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the Respondent's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

ORDER

The National Labor Relations Board orders that the Respondent, Service Litho Printing & Publishing Co., San Francisco, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain with Graphic Communications International Union Local 583 as the exclusive collective-bargaining representative of the employees in the following unit by ceasing operations at its facility and terminating all of its employees without complying with the provisions of the Agreement providing for payment of accrued vacation pay and severance pay immediately upon their termination and payment of contractually mandated health care and pension trust fund contributions on behalf of terminated unit employees for each week of severance pay:

All production employees employed by the Respondent at its San Francisco, California facility; excluding all other employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Comply with these terms of the Agreement requiring the payment of accrued vacation pay and contractually mandated severance pay immediately upon termination and make the terminated unit employees whole for any loss of earnings attributable to its failure to do so, in the manner set forth in the remedy section of this decision.

(b) Comply with the terms of the Agreement by making contractually required contributions to the health care and pension trust funds on behalf of the terminated unit employees for each week of severance pay, and reimburse the unit employees for any expenses ensuing from its failure to make the required contributions, in the manner set forth in the remedy section of this decision.

(c) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days after service by the Region, duplicate and mail, at its own expense, a copy of the attached notice marked "Appendix"³ to all unit employ-

³If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

ees at their last known addresses and the Union at its business address.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. October 10, 1997

William B. Gould IV,	Chairman
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Sarah M. Fox,	Member
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John E. Higgins, Jr.,	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to bargain with Graphic Communications International Union Local 583 as

the exclusive bargaining representative of the following unit employees by ceasing operations at our facility or terminating all of our employees without complying with the provisions of the collective-bargaining agreement providing for payment of accrued vacation pay and severance pay immediately upon unit employees' termination and payment of contractually mandated health care and pension trust fund contributions on behalf of terminated unit employees for each week of severance pay:

All production employees employed by us at our San Francisco, California facility; excluding all other employees, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL comply with the terms of the collective-bargaining agreement requiring the payment of accrued vacation pay and contractually mandated severance pay immediately upon termination and WE WILL make the terminated unit employees whole for any loss of earnings attributable to our failure to do so.

WE WILL comply with the terms of the collective-bargaining agreement by making contractually required contributions to the health care and pension trust funds on behalf of the terminated unit employees for each week of severance pay, and reimburse the unit employees for any expenses ensuing from our failure to make the required contributions.

SERVICE LITHO PRINTING & PUBLISHING
Co.